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ANALYSIS
OF THE APPLICATION OF THE AGREEMENT ON SUCCESSION OF FORMER SFRY

(REFERENCE TO THE LEGAL FRAMEWORK AND PRACTICE OF SOME COUNTRIES SUCCESSORS)

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INTRODUCTION

By accepting the Agreement on succession of former SFRY, signed in Vienna on 29 June 2001 as an internaional agreement, countries established by the disintegration of SFRY also accepted, apart from certain rights, the obligations that they would, after the ratification by the signatory countries, need to respect in line with the agreement. According to the aforementioned agreement, the signatory countries dealt with, among other things, problems related to the right to private property, occupancy rights and pensions of its citizens. At this moment, the aforementioned Agreement was ratified by all countries established by the disintegration of former SFRY, except of the Republic of Croatia.

This analysis has the ambition to present the legal framework and to identify some of the more significant obstacles related to private property, primarily to real estate, occupancy rights and rights to pension, that occur during the return of refugees to their pre-war homes. And those mainly refer to legal obstacles that refugees returning to Bosnia and Herzegovina and the Republic of Croatia are facing. In its first part, the Analysis points out the legal framework that existed before the adoption of the Agreement on succession of former SFRY, signed in Vienna on 29 June 2001 (hereinafter: the Agreement), and moreover, the analysis will try to point out the activities undertaken by the countries after the signing of the agreement regarding the realization of obligations that the signatory countries accepted by that Agreement. The goal of the analysis involves the monitoring of the implementation of the Agreement by the signatories and, in relation to that, the improvement of the position of citizens, refugees and persons damaged by war, in their efforts to repossess their private property from which they were expelled during the war, or to resolve any other issue that they may have.

The National conferences of non-governmental organizations of signatory countries of the Agreement (the conferences were organized within SEE-RAN) dealt with a similar analysis; however, during the conference , the agreement was not ratified by the contracting parties and therefore it was not conference-topical for most of the countries.

Annex E of the Agreement guarantees certain vested rights concerning the pensions, and Annex G guarantees certain vested rights of citizens and legal persons (corporations) regarding private property and occupancy rights.

The countries have obliged themselves to recognize, protect and return the right to property. The right to repossess movables and real estate that are located in the countries successors, and that the citizens were in possession of as of 31 december 1990, is guaranteed by the Agreement regardless of nationality, citizenship, place of residence or habitation of the owner. This right is guaranteed in line with the established and acknowledged standards and norms of the international law.

The right to property is also being recognized to all persons who acquired citizenship after 31 December 1990, or who after this date registered their place of residence or habitation in another country, which is not a country successor of former SFRY. This is a very important provision to people who reside outside BiH and former SFRY, and who decided to take another citizenship. The acquiring of citizenship of a third country can in no way endanger their right to property, which is located on the territory of former SFRY, that was in their possession until 31 December 1990.

If the holders of the right to property for any reason are not able to realize their right to property, they are entitled to compensation in accordance with the norms of civil and international law (the Art. 2 of the Annex G).

With regard to legal transfers of private property during the war, the Agreement of countries successors explicitly defines and indicates that every quasi transfer of rights onto movables and real estate that took place after 31 December 1990 and that was concluded under duress is immaterial and invalid.

On the other hand, the Agreement foresees the obligation to respect the agreement without discrimination concluded between citizens or other legal persons, including socially-owned companies, of former SFRY after 31 December 1990. Countries successors will provide for the enforcement of obligations upon these agreements in cases in which their enforcement was prevented from by the disintegration of former SFRY.

The Agreement particularly guarantees the enjoyment of citizens' occupancy rights. Countries successors have obliged themselves to enable that their domestic legislation with respect to occupancy rights (the right to use the apartment) is applied equally on persons that were citizens of former SFRY and who used to have the aforementioned right without discrimination upon any basis such as the gender, race, language, religion, political or other orientations, national or social background, affiliation to national minorities, property status, birth or any other status. It is noticeable that this provision is not so clear and unmistakeable as is the case with private property. Namely, with regard to private property, the following is explicitly being guaranteed: «...recognition, protection and returning ...», while with respect to occupancy right, the persons who «...had such rights...» are being mentioned in a very general mode within the

context of non-discriminatory application of internal laws of every country successor regarding the right to use an apartment.

Furthermore, the Agreement guarantees to citizens and other legal persons of former SFRY the protection of other vested rights such as material intellectual property rights, including patents, trademarks, geographic marks of origin, copyrights and other similar rights (the Art. 3 of the Annex G).

With respect to the protection of private property and other rights, the Agreement guarantees for citizens and legal persons the right to access to courts, administrative bodies and agencies of every country successor. This implies that an advance payment of court or other fees (cautio iudicatum solvi) will not be requested in case the plaintiff, i.e. the initiator of the proceedings is not a citizen of the respective country before which bodies he/she is seeking for protection. This obligation will be executed under the conditions of reciprocalness.

However, even if the condition of reciprocalness is not met, the guarantees of non-discrimination will not be prejudicated in reference to private property and other vested rights that exist in the domestic legislation of successor countries.

With regard to issues that refer to private property and other vested rights, a possiblity has been left to undertake other measures such as the concluding of bilateral agreements and informing of courts and other competent bodies of the authority.

It is important to emphasize that, in principle, the realization of any of the citizens' rights with regard to private property, occupancy right or other vested rights is not conditioned by the concluding of bilateral agreements between successor countries.

A. PRIVATE PROPERTY

I BOSNIA AND HERZEGOVINA

By the end of the war in 1995, the General Framework Agreement for Peace in Bosnia and Herzegovina was concluded, which guaranteed the repossession of private property to their pre-war owners. During the war and immediately after the war in BiH, legal provisions were passed (Law on Use of the Abandoned Property of RS, Law on Abandoned Apartments of FBiH and the Law on Temporarily Abandoned Real Estate owned by citizens of FBiH), and these by-laws enabled the private property, primarily houses and land, to be temporarily taken away from the rightful owner and to be allocated to refugees and displaced persons who arrived from other countries, former republics of SFRY. The return of refugees to their properties that were allocated to other persons by these laws was enabled by the passed provisions on cessation of the application of the aforementioned by-laws (Law on Cessation of the Application of the Law on Use of Abandoned Property of RS and the Law on Cessation of the Application of the Law on Abandoned Apartments of FBiH, and the Law on Cessation of the Application of the Law on Temporarily Abandoned Property Owned by Citizens of FBiH, as well as additional property laws that were passed in order to speed up the repossession process of those properties). Particularly important are the legislative activities of the High Representative for BiH in the creation of legal provisions referring to the repossession of private property. Provisions of financial nature were also issued by the Commission for Real Property Claims (CRPC). In the meantime, the state-owned property was legally transformed into state-owned property, and the privatization process of state-owned property was started (opened) by a package of provisions on privatization of the state capital in banks and enterprises, and that process is still on going. Besides, the Law on Privatization of Socially-owned Apartments, by which the state-housing fund was privatized, was adopted. This process too is on going.

It is necessary to have a historical insight into the legal framework that preceeded the current state in order to fully understand the current legal environment and to notice any possible ommissions.

Real estate in BiH, upon the classical civil-law (and the currently existing system) system, just as in the Republic of Croatia, holds in usufruct the protection of property and obligatory rights terms before the regular courts. That is being achieved with property and obligatory rights lawsuits. Apart from this protection, the property-right is also protected by criminal, administrative and constitutional proceedings.

Protection of property-rights in our legal system is usually being realized by a complaint for property repossession, complaint for trespassing, complaint from assumed property right, complaint for harassments, and compalint for indemnity caused by excessive right issues. Joint ownership, co-ownership and tenant ownership is protected in a similar mode. All these complaints are theoratically even today very efficient

instruments for the protection of private property, however due to the newly established legal environment (in which the competency of administrative bodies dominate over courts), are not being used often enough to eliminate war consequences. Obligatory-law protection of the property is indeed a significant field, but it will not be particularly referred to in this presentation, because its function is more focused on the protection of economic, and not legal interests of real estate owners.

The latest war caused mass displacing of citizens, which resulted in the fact that many citizens of BiH took refuge in the neighbouring countries established by the disintegration of SFRY and in other countries of Europe. Moreover, there was a mass displacing of citizens within BiH. Displaced persons mainly concentrated in ethnically homogenized communities. That had an inevitable impact in the sphere of legal property relations. People, in order to save themselves, abandoned their land, houses and apartments leaving everything behind. That is how many family housing units, business premises and other real estate in BiH got emptied. In the beginning of the war, the abandonment of private property by its owners happended in several ways. Most often the following happened: the owner abandoned his/her property due to security reasons, the owner was forcefully expelled, there was an exchange of private property for property outside BiH or property in another entity and similar. That property was declared abandoned and it was allocated to citizens who did not leave their pre-war residences or to refugees from both entities of BiH. Legal basis (or «legal basis») for allocation of houses was created in the RS by the Law on Use of the Abandoned Property, and in the FBiH by the Law on Temporarily Abandoned Real Estate Owned by Citizens of FBiH. In most cases the property was allocated to refugees and displaced persons in BiH, and in less cases they were allocated to domicile people.

The obligation of state bodies to return private property to their rightful owners was determined by post-war regulations (General Framework Agreement for Peace in Bosnia and Herzegovina and other regulations passed on the basis of that Agreement). Regulations for activities that were to be undertaken, procedures and bodies that were obliged to apply those regulations were thereafter legally determined.

Citizens who were rightful owners, possessors or users of real estate as of 30 April 1991, provided that they were expelled from their homes after 30 April 1991, and that they filed a claim for repossession of their property with the competent administrative body or with the Commission for Real Property Claims of Refugees and Displaced Persons (CRPC), are entitled to repossess their private property. This claim can still be filed with administrative bodies of BiH, and CRPC is still active and it still renders decisions, however it does no longer receive claims for private property repossession. When returning the property, the reasons for abandoning the property is not being determined and it is legally not relevant. Hence, with regard to the private property that was not legally sold or purchased with legal transactions, it is enough to prove, in order to realize the right to repossess, that the claimant was its rightful owner, possessor or user as of 30 April 1991 and that he/she filed a claim for repossession of the property. If any of the courts in BiH deprived the refugee or displaced person of the

aforementioned rights after 30 April 1991, such a decision is invalid and cannot be an obstacle in property repossession .

Destiny of concluded contracts on property exchange in the course of the war

Regarding the real estate that was subject to the exchange made after 30 April 1991, the situation is rather different. The legal validity of contracts that are not being disputed and that are being respected by the contracting parties is not disputable. Disputable is the status of contracts on private property exchange that the contracting parties have disputed by filing the claim for property repossession, which they exchanged by a formally legally valid contract on exchange of real estate. According to the existing legal regulations, in case the legality of the transfer of ownership rights is disputed, the administrative body addresses the clients to resolve the issue of legal validity of the aforementioned contract through regular civil suit. According to this regulation, it is not possible to have the pre-war owner repossess his/her real estate without the consent of the other contracting party. In the past practice, the ministry (which is responsible for private property repossession in administrative proceedings) acted in an unprincipled manner, because it used sometimes to recommend clients to initiate legal proceedings, and other times to return the property to the previous owner as if a contract never existed. Very often the «adminstration was silent». Nowadays, the legal validity is recognized of formally valid contracts on exchange of the real estate or contracts on sale of real estate (written contracts along with verified signatures of the contracting parties before the court), if not otherwise determined by the court. Thus, according to the law, the contracts are not invalid, which results in the fact that administrative bodies are not authorized to return apartments to their pre-war owners and that they are not authorized to by themselves determine the legal validity of those contracts. Furthermore, it means that the existing situation is being respected for clients who respect the contract. In legal proceedings, disputable contracts that were concluded during the war have small chances to remain in force by the court. One cannot avoid legal proceedings, which means that, in principle, property repossession in administrative proceedings before the Ministry of Refugees and Displaced Persons (in the RS), i.e. the competent administrative body (in the Federation of BiH), is not possible before the legal dispute is finalized.

Concerning the aforementioned issue, the practice of the Human Rights Chamber in BiH needs to be mentioned. In a number of cases in which administrative bodies, even though contracts on exchange of real estate existed (particularly between persons who possessed property outside BiH and those who possessed property in BiH), issued decisons on eviction of current occupants, the Human Rights Chamber issued provisional measures to stop evictions until the finalization of legal proceedings for the determination of legal validity of such contracts. However, it seems that neither the practice of the Human Rights Chamber was always harmonized regarding this issue.

Property repossession procedure

Procedure regarding the repossession of private property commences with filing the claim for repossession of that particular property. The claim is filed with the administrative body in the municipality in which the claimant possesses real estate. The competent body is obliged to within 30 days issue a decision by which it confirms that the claimant is the rightful owner, possessor or occupant of the property and further more defines that persons who use that property have to vacate it and hand it over to the claimant. If a refugee or a displaced person, who is entitled to alternative accomodation, is using his/her property, a 90-day-deadline is defined for him/her to vacate that property, starting from the day of decision issuance. A 15-day-deadline is given to domicile occupants or those who have repossessed their property, lost during the war. The decision is being submitted to the claimant, and if he/she has a proxy- the decision is being submitted to the proxy, as well as to the temporary occupant. Upon the expiration of the aforementioned deadlines, it is necessary to file a proposal for enforcement in writing. The proposal is to be submitted to the same body that executes it forcefully, along with police assistance, if the temporary occupant does not vacate it willingly and returns it to the claimant before the actual eviction day. It is important to emphasize that a claim for property repossession can be filed at any time, even so in future. An appeal is allowed to be filed against the first instance decision within the general deadline of 15 days, however the appeal does not postpone the execution of the decision. This means that the claimant has right to enter his/her property immediately upon the expiration of deadlines for vacation of temporary occupants as defined by this decision. If the appeal body, in cases in which a decision on property repossession was issued, does not decide upon the appeal within 60 days, it will be considered as a confirmation of the first instance decision.

The role of the Commission for Real Property Claims of Refugees amd Displaced Persons (CRPC)

Beside the administrative bodies, the claim for property repossession can be filed with the Commission for Real Property Claims of Refugees and Displaced Persons (CRPC). This Commission was established by the General Framework Agreement for Peace in Bosnia and Herzegovina, and in sense of repossession of private property, it acts in accordance with the Rule Book with which it itself determined regulations for its actions. After the processed procedure upon the claim for property repossession, it issues a decision by which it confirms the right to property and that decision is final and binding for all institutions in BiH. The claimant and the current occupant or a person with legal interest may file a proposal upon the decision of the Commission asking for a review of the decision in case there are evidences that the Commission did not have at its disposal (did not considerate) while issuing the decision. The request is submitted to that Commission, and it decides upon it competently.

Upon the expiration of deadlines, decision on property repossession issued by the administrative body becomes executable, thus the enforcement procedure is applied and that is also being carried out by the same administrative body. The property owner or member of his/her household initiates the procedure by the proposal for execution.

The execution is also carried out according to the Law on Execution of Decisions of the Commission for Real Property Claims of Refugees and Displaced Persons. Almost identical laws for the execution of decisions of the Commission were passed in both BiH entities. Also, the administrative body implements the procedure for execution of decisons issued by the Commission. The property owner or member of his/her household initiates the execution procedure by filing a proposal for it. The proposal is to be filed within 18 months upon the day of issuance of the CRPC decision. It is particularly important to keep this deadline in cases where repossession of an apartment is claimed, i.e. when there is a decision by which occupancy right is confirmed.

Persons who are entitled to alternative accommodation are legal occupants of someone else's property and their evictions, as is well-known, are being, for various reasons, carried out very slowly. However, even those who are not entitled to alternative accommodation very often illegally keep in various ways the property that they temporarily occupy, thus the inefficiency of administrative bodies that are responsible for property laws implementation is often misused. In such situation it is useful to determine priorities in the eviction schedule, hence Ombudsman of Bosnia and Herzegovina determined the priorities for eviction. Anyway, it has to be mentioned that the return process in 2002 and 2003 significantly improved and up to date the property was returned in 75% of cases, taking into account the fact that there are certain differences upon municipalities and regions.

However, even though enormous effort was put in the process of returning private property to its owners, it is being done very slowly, and the main reasons for that are not to be seeked in the legislation but those are reasons of non-legal nature. Although, the legislation could as well, even though it is not a limiting factor, which presents a good environment for legal insecurity, be improved by the elimination of reported defects that reflect in the following:

- the European Convention for the Protection of Fundamental Human Rights is not being directly applied;
- by-laws and sub-Acts on the level of the entities and cantons are not coordinated;
- the same field is unnecessarily regulated by several legal provisions;
- provisions are often contradictory and maladjusted;
- legislation is regulated by sub-Acts
- changes in provisions are frequent and unnecessary;
- more than one institution decides on the same type of dispute;
- poor personnel pattern of the administrative bodies;
- solidarity of the staff working on property repossession with refugees and displaced persons;
- informal and unfavourable influence of the local authorities on decision-making bodies;

- informal and unfavourable influence of a certain number of international NGOs;
- incapability of state bodies to provide for alternative accommodation.

II THE REPUBLIC OF CROATIA

Essentially, the regime of protection and limitation of property rights in Croatia, both during the war and in the post-war period, mainly retained the pre-war general system of protection and the limitation mechanisms of those rights. The law on property and other real rights (LoP) includes the principle of absoluteness of property rights in line with provisions of the RC Constitution and pursuant to the Art. 1 of the First protocol along with the European Convention on Human Rights and Fundamental Freedoms. According to the Law on Property, the property right never ceases to exist by the mere non-execution of that right, nor does the right to protect the property right become time-barred (the ownership-complaint does not become subject to the statute of limitations). Hence, the owner has right to request from the person who possesses his/her object to return that object, and that right does not become time-barred, if not otherwise determined by law (Art. 161 of the LoP). No one can acquire or lose the property right without a valid legal basis.

Legal basis for taking away the property right in general, i.e. public interest (in the interest of the Republic of Croatia) is expropriation, and it is possible to carry it out only along with a fee to the amount of the market value.

Objects can be temporarily taken away in the public interest, but only under the presumptions stipulated by law. Thus in e.g. criminal proceedings they can temporarily deprive of objects that are subjects to the criminal act or if they could be used as evidence in the criminal proceedings.

A property right can be acquired by a possession of someone else's object of long duration, but only if that object was possessed independently (as if he/she was the owner of that object), but even then the object was to be possessed in an honest manner (the possessor who knew, or due to circumstances had reasons to suspect that he/she has not the right to possess). Honesty, in sense of the previous regulation, is also called conscientiously.

Public authority can exceptionally limit the property right and it can do it only by law and only under presumptions stipulated by the RC Constitution, and those are the following: in order to protect the interest and security of RC, nature, human environment and health of the population (Art. 50 section 2 of the RC Constitution). As a rule there is no compensation for the limitation of property rights, however – if the limitations of property rights are imposed by law that request from the owner of a certain object, but not from all other owners of such objects (e.g. all other owners of houses or apartments), greater sacrifice, or if they put him/her in a position similar to the one in which he/she would have been if expropriation was carried out – that owner, according to the Art. 33

section 3 of the LoP is entitled to compensation upon expropriation. In spite of it, only the latest amendment to the Law on fields of special welfare of July 2002 stipulates the right of the owner to compensation.

Limitations of property rights, which have an impact on the realization of rights of physical persons to repossess their homes, more specifically, the right of refugee and displaced Serbs from Croatia to return, have been stipulated by the Law on temporary taking possession and running of a certain property and the Law on fields of special welfare. By these laws the rightful owners of the real estate are temporarily prevented from possessing them, thus, they are prevented from living in their houses or apartments.

Property of refugee and displaced Serb population was, firstly by the Decree of RC Government on temporary taking possession and running of a certain property, passed on 31 August 1995 («National papers», no. 63/95), and thereafter by the Law on temporary taking possession and running of a certain property, passed on 20 September 1995 («National Papers», no. 73/95, 7/96, and 100/97), put under the temporary management of RC and at its disposal in accordance with the provisions of this law. The property, in the sense of this law, includes all movabels and immovables.

Municipalities and cities in which the property of Serb refugees are located took possession of them (Art.4), and they are authorized to allocate them to other persons (Art. 5). If the property of Serb owners was allocated to other persons, these persons could not be deprived of that property until another adequate property was provided for (Art. 11). The law does not specify who will provide for another adequate property and within what deadline it is to be done, thus the property repossession of Serb owners was completely uncertain. The uncertainty is even bigger since the Law on Property and other real rights stipulates (Art. 163 section 1) that the «possessor has the right to refuse to hand over the object to its rightful owner if he/she has the right according to which he/she is authorized to posses those objects (right to possess)». The right to possess the property of Serb refugees was given to people by a decision of the municipal, i.e. city commission for temporary taking possession and running of a property (Art. 5). Therefore, as long as the temporary possessor has the right to posses and use the objects, and that right was allocated to him by a decision of the commission, the righful owner will not succeed with the property complaint, i.e. to repossess his belongins through the court. These provisions are no longer in force.

According to the amendments to the Law on fields of special welfare of July 2002, the RC Ministry of Public Affairs, Reconstruction and Construction was obliged to at the latest until 31 December 2002 render decisions on property repossession to all rightful owners (to the owners who filed a claim for property repossession until 01 August 2002, the Ministry was, according to this law, obliged to issue decisions on property repossession by 30 October 2002). Hence, the temporary possessors do no longer have a decision according to which they are authorized to possess someone else's belongings (specifically, to live in someone else's house or apartment without the consent of the owner). In spite of the obligation to render decisions on property repossession to all rightful owners, temporary possessors who acquired the possession by a decision of the

municipal, i.e. city housing commission, explicitly upon the latest amendment to the Law on fields of special wellfare, still have the right to possess someone else's house or apartment as long as they do not realize the right to accommodation (entitlement to alternative accommodation) or until the Ministry of Public Affairs, Reconstruction and Construction does not provide for another temporary accommodation. The question aroses as on what constitutional basis?

Constitutional basis for the issuance of the Law on temporary taking possession and running of a certain property, with which property rights of refugee and expelled Serbs are significantly limited, was found in the quoted provision of the RC Constitution, and that in order to protect the interest and security of RC. The interest of RC was, in the first place, the protection of property of the absent owners, and secondly, the security of claims of creditors that occured in relation to that property (Art. 1 of the Law). That was ratio legis or the goal of passing this law. In practice, however, the least was done to protect that property; on contrary, it was widely devestated and destroyed, while the movables were, as a rule, stolen, just as in BiH.

With the return of the absent owner, i.e. the filing of the claim for property repossession by the rightful owner, the reason to apply this law ceased to exist, since one can no longer argue about the property «that was abandoned by the owner and that is not used by him/her», and the reason to «protect» it. Nevertheless, it is not being taken into account. The temporary possessor still has the right to use someone else's house or apartment, as long as he/she is not provided with alternative accommodation. This illustrates in the best possible way that the real intention of the legislator was not the protection of property of the absent owners but many other things that limitate property rights of refugee and expelled Serbs and it makes it more difficult and impossible for them to return to Croatia.

The real property treatment of the absent owners expelled from Croatia can be seen from another goal for which the Law on temporary taking possession and running of a certain property was passed. That goal includes «insurance of creditors' claims regarding that property». Practically speaking, it was considered to be war booty, and that was how it was referred to. Refugee and expelled property owners were in this way generally suspected of damage caused to others. This generally formulated goal and this law encouraged a wide practice of putting the property of Serbs under mortgage in order to insure various claims, such as the enormously high interests for small pre-war debts.

After numerous objections and pressures by the international community, the Croatian Parliament passed the Law on Cessation of the validity of the Law on temporary taking possession and running of a certain property on 10 July 1998 («National Papers», no. 101/98). The Art. 2 section 1 of this Law stipulates that the Program for return and care of expelled, refugee and displaced persons, passed by the Croatian Parliament on 26 June 1998 («National Papers», no. 92/98), will be applied on the procedures regarding temporary use, running and supervision of property of physical persons that was defined by the Law on temporary taking possession and running of a certain property.

The program, as is well-known, among other things, unconstitutionally deprived refugee and expelled Serbs from Croatia, the property owners, of their active identity cards that they needed in order to initiate legal proceedings for the protection of their property, and it transferred the «care» about private property to housing commissions. This is a typical example as to how through parallel regulations, very often by passing by and contrary to general regulations, it is more difficult and slower to realize and protect the rights of refugee and expelled Croatian citizens of Serb nationality; they are even being limited and deprived of certain constitutional rights. Truely, until the latest property laws were passed in BiH (in 1998 and thereafter), in most cases regular courts announced themselves as «not competent» to protect private property in initiated lawsuits.

The goal of issuing such a Program was to bypass clear and precise constitutional guarantees of return and legal obligations and procedures of producing new Croatian documents for citizenship, i.e. it was done to limit the return, hence it left most of the refugee and expelled Serbs in the position of apartheid or stateless persons.

By adopting the amendments to the Law on fields of special wellfare in July 2002, Croatian Parliament annulled the discriminatory items 9, 10 and 14 of the Program for return and care of expelled, refugee and displaced persons, as well as the Art. 2 of the Law on Cessation of the validity of the Law on temporary taking possession and running of a certain property. However, as we said, things did not significantly improve, since still the right of the temporary possessor in excess of the right of the rightful owner.

In cases of property repossession of rightful owners, the main regulation – Law on Property and other real rights- is not being applied, but special parallel regulations, such as – Law on fields of special wellfare, and before that one- Law on temporary taking possession and running of a certain property, thereafter the Program for return. Hence, all special, parallel regulations.

The selective (non)application of the same Croatian regulations, taking into account the national affiliation, is clear in the following example. The Law on Property and other real rights is being applied in cases where the displaced Serbs are temporarily accommodated with the houses of Croats in former UNTAES territory in Croatia, thus the eviction from those houses is promptly being carried out, without providing for alternative accommodation, while at the same time in former sectors North and South in Croatia, Bosnian Croats are protected from evictions as long as they do not have alternative accommodation provided for, which they very often refuse to accept. Hence, regular Croatian legal system is applied for Croats returnees, while parallel, «paralegal» legal system is applied for refugee and expelled Serbs from Croatia, which results in unequality and discrimination of Croatian citizens upon national basis.

One of the discriminatory laws is the Law on fields of special wellfare. This law was passed by the House of Representatives of the Croatian National Parliament on its session held on 17 May 1996 («National Papers», no. 44/96, 57/96, 124/97, 73/00, 87/00, 69/01, and 88/02). As a consequence of the pressure by the international community, the

Croatian government was forced to, in several amendments to this law, at some extent revise its goals and to alleviate its most strict discriminatory provisions. We should remind ourselves as to how far it went in the attempt to usurp property rights of refugees from Croatia recalling the provisions, which ceased to be valid, and according to which the occupant becomes the owner of someone else's property after ten years of occupying it.

With regard to that, lets remind ourselves that the Croatian government, in order to meet the criteria to enter the Council of Europe, on 15 March 1996, officially took over, among other things, the following obligation: «to undertake all necessary measures, including police protection, in order to guarantee the security and human rights to the Serb population in Croatia, especially in former UNPA zones, in order to ease the return of people who abandoned those territories and to allow them, with a special procedure prescribed by law, to efficiently realize their rights to repossess their property or to get compensation». This vitally important obligation to refugees, undertaken by the Croatian governemnt, was not fulfilled.

Pursuant to the Art. 2 of the Annex G of the Agreement on Succession, the protection of right to private property is guaranteed regardless of the nationality, thus it seems that the Republic of Croatia in the existing legal framework does not respect sufficiently enough the obligation from this article. Croatia did not ratify the agreement, however the domestic legal system and international standards regarding the respecting of human rights do enable it to protect owners of private property and to enable them to realize their property rights, if there is any political will for it.

III REGIONAL OBSTACLES REGARDING THE PRIVATE PROPERTY

Most of the refugees that came to the Republic of Croatia are from Bosnia and Herzegovina, and mainly those of Croatian nationality, and most of the refugees from Croatia that went to Bosnia and Herzegovina, and Serbia and Montenegro were those of Serb nationality.

Refugees who are returning to their pre-war homes in Croatia face problems in repossessing their property that are currently being occupied by refugees, mainly those from Bosnia and Herzegovina. If for any reason those refugees do not want to vacate their property, according to the existing regulations of Croatia, their right to use that property is possible, with parallel regulations, to protect in a more efficient way than the vested right of the rightful owner of that property. In this unacceptable practice very often those occupants have realized their right to repossess their houses in Bosnia and Herzegovina, but even then they «have stronger rights than the righful owner of those houses».

Apart from that, problems are also legal transactions done under irregular, war conditions whereupon private real estate was transferred upon the contractual basis (exchange, sale, etc.) between persons from the Republic of Croatia and Bosnia and Herzegovina. In BiH these contracts are mainly being annulled in legal proceedings and thus persons from other countries established by the disintegration of SFRY are enabled to repossess their real estate located in BiH. However, when one tries to repossess property in those countries, very often they face obstacles that are difficult to overcome because in those countries the legislation is not the same and that opens the possiblity for misuse of rights.

In Bosnia and Herzegovina, one part of the problem was resolved by the introduction of the institution of Human Rights Chamber in BiH, whose practice was referred to previously, that citizens of BiH can address for violation of their human rights without greater costs. However, even this Chamber is overloaded with cases (several thousands of them) and they are being resolved very slowly. Moreover, regulations are in the preparation phase that will limit existence of the Chamber by a certain time period, maybe by the end of this year. Then the cases received by the Human Rights Chamber would be forwarded to BiH Constitutional Court, which is also competent to act upon certain charges for violation of human rights. Otherwise, one can hope that the fact that BiH Constitutional Court, due to current problems regarding the election of a certain number of judges, has not been working efficiently for approximately one year will remain only a current problem. The Chamber (just as BiH Constitutional Court) can resolve problems of citizens on an inter-entity level in BiH, but not those with the international elements. Such problems can be reolved only through European instruments for the protection of property or international agreements. This is logical since both BiH and Croatia became members of the Council of Europe, thus there is access to the European Court for Human Rights, hence the existence of the Chamber seems dispensable. However, it is obvious that it is legally more complicated to file a lawsuit with the court in Strasbourg than with domestic bodies, and it is also linked to high expenditures, thus we are certain that only few citizens will even try to use that right.

That is why it would be necessary to do everything possible in order to have the legal system in all countries of our region adopt the principles included in international conventions for the protection of human rights and to offer to citizens a more efficient legal protection before domestic courts and competent bodies. That would mostly contribute to the realization of the goal set up by the Annex G of the Agreement regarding the issues of succession of former SFRY.

Regarding the international legal protection of property rights, at this moment it presents a hypothetical legal possibility that seems difficult to realize in practice. Namely, now when successor countries of SFRY are members of the Council of Europe, all legal means for the protection of property rights need to be exhausted before domestic bodies before filing an application with the Court for Human Rights in Strasbourg. It is of course difficult to expect that refugees and displaced persons, whose property rights have been violated, and whose housing situation is poor, will successfully realize their rights before this court, especially after long-lasting legal fights before domestic courts and

administrative bodies. As a matter of fact, in conditions of hard life of refugees in the whole post-war period it would be very useful to the institution for the-so-called poor rights function, and to have these categories of poeple receive free legal aid. It is obvious that this social function of the newly established countries on the former Yugoslavia territory will be carried out by a certain number of NGOs, as was the case so far.

B. OCCUPANCY RIGHTS

I BOSNIA AND HERZEGOVINA

In former SFRY, the arrangement of relations in the housing field was in the competency of the Republics, thus Bosnia and Herzegovina then adopted its Law on Housing Relations («SR BiH Official Papers», no. 13/74). There were a lot of amendments to the law before the war («SR BiH Official Papers», no. 14/76, 23/76, 34/83, 12/87 and 36/89). This law completely regulated the field of housing issues with regard to rights and obligations of occupancy right holders and allocation right holders who allocated socially-owned apartments for use (that is, in title only the so called, right to use), as well as apartments owned by citizens who are strained with occupancy right. Apart from the Law on Housing Relation, relations in the field of housing issues were also regulated by the Law on earmarking and directing funds for housing needs and on self-governing interest communities in the housing field («SR BiH Official Papers», no. 13/74, 34/80 and 39/84) and the Law on co-ownership of apartment («SR BiH Official Papers», no. 26/89 and 27/91).

According to the aforementioned regulations, a citizen who moved into an apartment upon a by-law that presents a valid basis for occupying the apartment has the permanent and peaceful right to use a socially-owned apartment. Hence, the possession of a valid by-law- basis for the moving in (regularly it was a final decision on allocation of the apartment by the allocation right holder who has the right to have socially-owned apartments at its disposal) and the moving into the apartment were conditions for acquiring the status of occupancy right holder over a socially-owned apartment. According to its legal nature, occupancy right could not be equalized with the property owned by a citizen nor with any other real right, even though it has similarities with the property (e.g. possibility of a permanent possession, exchange for another occupancy right, possiblity to «inherit» from certain kinship and other persons), but also differencies (there is no possibility for the occupancy right holder to have the apartment at his/her disposal in the sense of sale, encumbering with mortgage or commissionaire affairs, limitations in the possibilty of renting it, loss of occupancy right due to the non-use of it, etc). It is however about the law of property sui generis that was not well-known in the legal theory until the end of the Second World War. Regarding the exchange of socially-owned apartments, the regulations enable the occupancy right holders to freely exchange their apartments. The only conditions in the exchange of apartments involve a written contract on exchange (it is not necessary to verify it) and that the allocation right holders

give their written consent for the exchange of apartments. Whereupon allocation right holders are obliged to give their consent for the exchange, and it has been envisaged in the specified exceptions as to when they may refuse to do so (the rent was not paid, contract on use of the apartment was previously cancelled, fictious exchange of apartments and similar). An efficient protection in administrative proceedings have been provided for in cases where the allocation right holder illegally refuses to give its consent to occupancy right holders for the exchange of apartments. It is interesting to notice that all republics of former SFRY envisaged the possibility of the exchange of apartment under almost identical conditions. The right to exchange an apartment with another one located on the territory of other Republics was not limited and in practice these types of exchanges were conducted very often. There were no specially important conditions and limitations in the BiH legislation.

Socially political communities, all economic entities in BiH (companies and institutions whose property for the most part was socially owned), posts, banks, savings banks, state bodies, military, police, courts, prosecutors' offices and other legal entities financed and allocated apartments. The biggest allocation right holders were the former JNA (Yugoslavian National Army) and big economic systems, and the volume of the housing construction depended on the economic power of the entity and its housing policy. A smaller part of apartments was also provided for small entities that could not financially support the construction of apartment buidlings upon the principle of joining the funds on the basis of solidarity.

Members of the occupancy right holder's household, who live together with him/her have the right to use the apartment together with him/her, as well as persons who ceased to be members of that household but remained in the apartment. Those are the following: spouse, children (marital, extramarital, adopted, step-child), childrens' spouses, in-laws, brothers and sisters, grandchildren, as well as persons who are obliged to support the occupancy right holder or vice versa, and who permanently live with him/her, as well as persons who have been living with the occupancy right holder in an economic community in the same apartment for more than 10 years or more than 5 years if he/she moved into the apartment on the basis of a contract on lifelong care of the occupancy right holder. It is important to mention that the spouse is considered to be the occupancy right holder upon the law itself.

The occupancy right for apartments that are being used for an unspecified period ceases to be valid by the termination of the contract on use of the apartment. Occupancy right holder could cancel the contract every first of the month in a written form without giving out any explanation for the cancelling. Allocation right holder or the community for residence could cancel the contract on use of the apartment to the occupancy right holder in the following cases: if the apartment was being used for purposes that were not in line with the contract, if the House Rules are not respected, if the rent is not being paid, if the apartment is being rented to another person, if the apartment is turned into business premises, if the whole apartment is illegally given to subtenants, if there is a fictious exchange of apartments. These conditions that preceded the cancelling were in practice very rare because prior to the cancellation there were numerous warnings to eliminate the

reasons for the cancellation, but there were nevertheless some contract terminations. The most frequent reasons for the contract cancellation was when the occupancy right holder and members of his/her household stopped without justification to personally use the apartment continually for more than 6 months. Justified reasons for the non-use of the apartment have been specifically outlined in the law. If the occupancy right holder was allocated the apartment on the basis of his/her employment, the contract termination could also occur when he/she stated that he/she did no longer wanted to work or when his/her employment contract was terminated due to severe violation of labour relations. A procedure with very short terms and numerous restrictions regarding the possibility to terminate an employment contract was stipulated for the dismissal upon this basis due to the years of service with the allocation right holder or due to the timeframe in which that persons occupied the apartment.

Pre-war legal proceedings from housing relations regarding the cancellation of the contract on use of the apartment, as a rule, although urgent by law, lasted very long and the court strictly followed the legal conditions for the cancellation of contract and they mainly protected, very often without critics, certain rights of employees (occupancy right holder) taking into account the then existing socialistic productional and political relations. Besides the court competency, administrative bodies were and still are competent for housing issues.

All employees, regardless of the entity with which they were employed and regardless of the origin of the company's capital (private or social), were obliged to set aside certain outright grants in the housing fund (for individual housing construction, housing fund of its company and solidarity construction). The funds were set aside from their wages, and they depended on the amount of wages (same percentage regardless of the amount of the wages).

The previous legal framework during the post-war period was pointed out so that certain legal (or «legal») actions after the war focusing on the limitation of the occupants' rights who now have the status of a refugee or a displaced person could be more objectively qualified.

In the course of the last war in BiH and immediately after the war, legal changes occured in both entities and sub-Acts were passed according to which the pre-war occupancy right holders, who are refugees and displaced persons, lost their occupancy rights. Reasons for their loss of occupancy rights were most often the nonuse of the apartment during the war, the rationalization of the housing space, military service in the other entity, short or unrealistic terms within which claims for repossession of the apartment were to be filed. Namely, significant changes of regulations by which occupancy rights were limited and cancelled occured in the formally regular legal proceedings in both entities, thus the occupancy rights were cancelled to the holders (in effect and legally) mainly in their absence. It is not necessary to emphasize that the cancelling of occupancy rights was done to refugees and displaced persons, and that the

main criteria for it was the ethnic affiliation of the occupancy right holders who were discriminated against as members of the minority population in the respective entity.

The already mentioned housing regulations were changed by the decisions of the High Representative for Bosnia and Herzegovina (OHR) and his pressures on entity bodies, thus the occupancy right holders were enabled to repossess the apartments that they lost on the basis of these regulations.

By the General Framework Agreement for Peace in Bosnia and Herzegovina the repossession of abandoned property is guaranteed (which also includes apartments). That is why the entity bodies adopted the laws according to which legal presumptions were created for the returning of apartments to the pre-war occupancy right holders (RS Law on Cessation of the Application of the Law on Use of Abandoned Property, FBiH Law on Cessation of the Application of the Law on Abandoned Apartments, which the High Representative for BiH amended several times). The matter of returning of apartments to occupancy right holders was defined by the aforementioned regulations. Occupancy right holders have the right to repossess socially-owned apartments if they had occupancy right as of 30 April 1991, provided that they lost their apartments in the period after 30 April 1991, and that they filed a claim for repossession of that apartment until a certain date (different deadlines in the entities) with the administrative body or the Commission for Real Property Claims of Refugees and Displaced Persons. The deadlines were exclusive, which means that by missing the deadline one loses forever the right to repossess the apartment. The reason for abandonment of the apartment is not being determined and is legally not relevant. Deadlines for filing of claims for the repossession of apartments in BiH have expired (in the Federation of BiH in 1999, and in the RS in 2000) and it is no longer possible to file a claim for repossession of the apartment.

Apartments that were exchanged after 01 April 1992 were for a long period disputable, however finally a standpoint was taken that the formally legally valid contracts are in force until otherwise proved by the court. That means that administrative bodies can not ignore a formally legally valid contract but it is their duty to address clients to start a lawsuit and determine the legal validity of the contract before the court. In the defined very short and condensed administrative procedure a decision on repossession of the apartment is being issued precisely defining the deadlines and rights of the previous occupancy right holder and the temporary occupant. Alternative accommodation is not being provided for illegal temporary occupants, and the deadline for them to vacate the apartment is 15 days upon the issuance of the decision. Refugees and displaced persons who have not repossessed their homes from 1991 are being guaranteed alternative accommodation and they get a 90-day-deadline to vacate the apartment. The entitlement to alternative accommodation upon the expiration of the deadline for the occupant to vacate the apartment does not legally prevent from evicting the refugee.

Upon the expiration of the deadlines, decisions on repossession of the apartment becomes executive, thus the enforcement procedure is started. This procedure is being conducted by the administrative bodies in the same way as with the repossession of

property. The procedure is initiated by a proposal for enforcement filed by the occupancy right holder or a member of his/her household (having that status upon the aforementioned Art. 6 of the Law on Housing Relations), and it has to be filed within a short exclusive deadline.That deadline amounts to 90 days upon the expiration of the deadline given to the temporary occupant to vacate the apartment, i.e. upon putting the apartment at the disposal, and in case the deadline is missed without justification, the apartment is forever lost. The justified reasons are specifically outlined.

Apart from the decisions on repossession of apartments of the entity administrative bodies, the decisions issued by the Commission for Real Property Claims of Refugees and Displaced Persons (CRPC) that are final and binding are also basis for enforcement (the so called eviction). The enforcement is being carried out on the basis of the entity Law on Execution of the Decisions of the Commission for Real Property Claims of Refugees and Displaced Persons. The enforcement procedure of the decision of this Commission is being carried out by administrative bodies. Enforcement procedure is being initiated by a proposal filed by the occupancy right holder or the member of his/her household.

Human Rights Chamber in BiH as the key institution for the coordination of the application of laws that protect pre-war occupants

Pursuant to Annex VI of the Dayton Agreement, that is, the Agreement on Human Rights, the Commission for Human Rights was established in Bosnia and Herzegovina, which includes the institutions of Ombudsman and BiH Human Rights Chamber.

This new body, Human Rights Chamber of Bosnia and Herzegovina, presents in some sense a substitute for the jurisdiction of the European Court for Human Rights in Strasbourg, since at the time when the Annex VI of the Dayton Agreement was passed (the Agreement on Human Rights in Bosnia and Herzegovina), BiH was not a valid member of the Council of Europe. Thus this is a «sui generis» body and even seven years after signing of the Dayton Agreement in Bosnia and Herzegovina, there are still discussion about whether this body is part of the legal system of BiH or not, and especially there are discussions about the competencies of the Human Rights Chamber and BiH Constitutional Court. Namely, BiH Constitutional Court may too, according to the BiH Constitution, deal with the violation of human rights guaranteed by the European Convention, and it may too render final and executive decisions in individual cases upon charged filed by physical persons. There were alredy talks about the plan to integrate these two highest judicial institutions in BiH.

While considering individual appeals on the violation of human rights, in accordance with the Art. VIII of the Agreement on Human Rights, this Chamber needs to primarily consider whether there are any efficient domestic effective remedies and if there are any, whether they have been exhausted in the previous proceedings. Moreover, the Chamber can refuse all appeals that it takes for obviously unfounded.

During its work in the past seven years, the Chamber received thousands of charges upon which the claimant complained about the violation of one of the rights and freedoms guaranteed by the European Convention on Human Rights and Fundamental Freedoms, and which has been incorporated in the domestic legal system.

One of the problems regarding the private property and its protection also occurs when defining what exactly private property means. This particularly refers to the issue of the so called military apartments, that is, apartments in the ownership of former JNA. The role of the Chamber is especially significant in the resolving of this specific problem, which will be more mentioned in the next text.

Occupancy right holders of apartments owned by former JNA got the possibility to buy off those apartments. This Law was passed in 1990, immediately prior to the war, and it entered into force on 06 January 1991. By this law the occupancy right holders of the so called «military apartments» were put in a privileged position when compared to other citizens, which is one of the arguments on which bases their property rights were disputed in the course of and immediately after the war.

Namely, the way in which military personell got the possibility to buy off socially-owned apartments, that is, apartments in the ownership of JNA, before all other occupancy right holders was for a long period disputable. The political aspect of the situation is certainly important in this specific problem. One has to take into account the fact that in more than 90% of cases occupancy right holders or owners of those apartments were members of former JNA who either left the country (BiH) and continued with their military service in Yugoslavian Army or in some cases continued with their service in the Army of Republika Srpska, whose legislative bodies passed the aforementioned regulations. It is very important that the Chamber concluded that the rights upon the contract on purchase of the apartment concluded with JNA refer to property in sense of the Article 1 of the Protocol number I along with the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention). It seems that such a standpoint of the Chamber is of essential importance for the resolution of this problem.

The issue of military apartments has nevertheless been resolved to the benefit of the owners, i.e. occupancy right holders over those apartments by the acknowledgement of their ownerships on them, with only one exception. Namely, regarding the apartments that were declared abandoned on the territory of FBiH, and that were at the disposal of the Federal Ministry of Defence, the occupancy right holder is not considered to be a refugee if he/she on 30 April 1991 was actively serving the SSNO in JNA and was not a citizen of SRBiH according to the records on citizenships, except if his/her habitation was approved in the status of a refugee or another type of protection that corresponded to this status in one of the countries outside former SFRY, before 14 December 1995 (Art. 3 of the Law on Cessation of the Application of the Law on Abandoned Apartments of FBiH). Furthermore, according to further wording of the mentioned provision, the occupancy right holder of the apartment is not considered to be a refugee if he/she, after 14

December 1995, remained in the active service in any of the armed forces outside the territory of BiH, or if he/she acquired a new occupancy right outside BiH.

The fact is that by this exception most probably provisions of international conventions for the protection of human rights and the status of a refugee are being violated and that one can argue about the non-constitutionality of this article. The provision of this article results also from the previous compromise that was reached between OHR and local authorities, and especially the representatives of the Ministry of Defence of the Federation of BiH, which has those apartments at its disposal in the Federation of BiH, as the allocation right holder instead of former JNA. Finally, according to the decision of BiH Human Rights Chamber, in case of the quoted provision clause 3 of the Law on Cessation of the Application of the Law on Abandoned Apartments in FBiH, there is a violation of the peaceful enjoyment of possession according to the Art. 1 of the Protocol no. I along with the Convention, thus the Federation of BiH is required to make changes in the Art. 3 of the Law on Cessation of the Application of the Law on Abandoned Apartments of FBiH. The fact that this change was not yet made should not prevent the courts and other state bodies to issue their decisions by respecting the standpoint of the Human Rights Chamber, since it is their constitutional obligation to directly apply the provisions of the Convention on Human Rights when the domestic law is in coalition with its provisions. FBiH Government has already made a draft of the changes of this article, which is currently in the parliamentary procedure. The contents of the future legal amendments will most probably take into account the standpoints of the Human Rights Chamber. By this Bosnia and Herzegovina will make a step forward in the realization of obligations that were taken over from the Agreement on Succession. What is more, the courts in the Federation of BiH lately supported the application of the aforementioned decision of the Chamber, even before the formal adjustment of the disputable provision, described above.

Hence, it can finally be concluded that the total situation regarding the apartment repossession in BiH, observed also in relation with the obligations from the Agreement on Succession, has one constant positive tendency. By taking the presented part that refers to military apartments with a reserve, the legal framework is satisfactory and presents a suitable framework for a final implementation of the Agreement on Succession in BiH. Truely enough, things are worse in practice than the legal framework, but is seems that it is more an issue of lack in efficiency than in open obstruction. Such a relatively favourable situation is probably more of a consequence of a very active role, i.e. mandate of OHR in BiH than of the free will of local BiH politicans.

II THE REPUBLIC OF CROATIA

Resolution of problems regarding occupancy rights that were taken away is of extreme importance for the return of the urban population of refugee and expelled Serbs to Croatia.

At this moment, of all countries that undergo transition, including all countries of former SFRY, Croatia is the only country that not only did not enable the privatization of socially-owned apartments, and this refers to only one part of its citizens, but it also deprived them of the right to property.

According to estimations of certain non-governmental organizations, more than 20.000 families lost their occupancy rights in Croatia through legal proceedings that were lead in absence of occupancy right holders. Apartments in Croatia were taken away in the way that in almost all cases proceedings were lead in the absence of occupancy right holders, without their knowledge, and with the engagment of the so called trustees for special cases. Before the new property laws were passed (especially before 1998), similar things happened in BiH, particularly in Republika Srpska. Such an action is in direct contradiction to the provisions of the Law on Legal Proceedings that, by the articles 84 and 86 in these situations, obliged the courts to nominate to the defendant a temporary counsel from the rank of attorneies from the competent court. In this way, there were wide violations of the right to fair trial, prescribed by the Art. 6 of the European Convention on Human Rights and Fundamental Freedoms.

According to estimations, after the Croatian military actions «Bljesak» and «Oluja», approximately 30-40.000 families lost their occupancy rights upon the Law on leasing of apartments on the liberated territory («National Papers», no. 73/95). Namely, on 20 September 1995 the Croatian legislator passed this law, by which the occupancy rights on socially-owned apartments were taken away from refugee and expelled persons (mainly from Serbs), and which was formulated in the following way:«... on the previously occupied, and now liberated territory of the Republic of Croatia...». The occupancy right was taken away according to the law if the occupancy right holder abandoned the apartment and was not using it for more than 90 days upon the entry of this law into force. The law entered into force upon its publication in the «National Papers», i.e. on 27 September 1995. Thus, they lost their occupancy rights because they did not return within 90 days upon the entry of the respective law into force. Certainly, the return within such a short time limit was not possible due to the complete post-war environment.

Upon the expiration of the mentioned 90-day-deadline in Croatia, at the same time most often all effective remedies and any type of court or out-of-court protection of the property right was denied to this category of occupancy right holders. Nowadays the situation in Croatia is such that the occupancy rights on socially-owned apartments have been cancelled to the refugee and expelled Serbs and the deadline to purchase the apartments has expired. According to the regulations on privatization, most of those apartments are now owned by other persons.

Surely, the described practice also contradicts the provisions of the Resolution no. 1120 of the UN Security Council by which «the rights of all refugee and expelled persons from the Republic of Croatia to repossess their pre-war homes throughout Croatia is being confirmed once again».

In the Program for the return and care of expelled, refugee and displaced persons (subsection 8), the Croatian Government took over the obligation to propose to the Croatian Parliament a legal framework for the resolution of issues arosen by the annullment of the Law on leasing of apartments on the liberated territory, which it has not yet fulfilled. This is topically even nowadays.

Solutions for these painful issues that are of vital importance to many refugee and expelled persons need to be found in line with international standards for human rights, for which Croatia obliged itself to do, as have all other ex-Yu republics that are today independent countries.

One of those international standards involve the security of having possession as a protection of citizens from forceful migrations, and they oblige the countries to offer legal security to all persons who are being threatened with forceful eviction, and to take all measures for complete protection from forceful eviction.

Secondly, the European Convention on Human Rights and Fundamental Freedoms, as well as its adequate protocols, accepted a broader interpretation of the individual's right to peaceful enjoyment of property. Occupancy right, in that sense, is the right that falls under the protection of the Convention. Besides, being a specific property right, it would fall under the term of property as formulated in the article 1 of the First Protocol of the Convention. The European Court for Human Rights interprets the term of property in broader terms, defined in this article, by including in the term movables and immovables (e.g. bank accounts, shares) and vested rights (e.g. pensions, social rights, rental contracts, i.e the leaser's right to rent). Such interpretation of the Convention provides for the protection of a wide range of rights and interests that have economic value, thus consequently, the protection of occupancy rights. Besides, the European Convention on Human Rights and Fundamental Freedoms, in the article 8, protects the right to home. An apartment over which there is an occupancy right present the home of the occupancy right holder and his/her family. The country which took away the right to home violated the human right protected by this provision of the Convention.

In case the country denies the right to home, i.e. refuses to return it, it is obliged to compensate that loss (damage) to the holder of that right. Accordingly, the Republic of Croatia is obliged to resolve the loss of occupancy rights in the following three ways: 1/ naturalistic restitution (returning of the apartment to the previous occupancy right holder) in cases where there was no establishment of ownership on the apartment when concluding the contract on protected rent; 2/ by allocating a rented apartment or land plot and construction material for the construction of a housing object (alternative accommodation); 3/ compensation in cash of the previous occupancy right holder. In the first two cases, the right to privatize the apartment needs to be enabled under the same conditions under which all other occupancy right holders in Croatia realized their rights.

Such an approach of the Republic of Croatia at this moment probably does not respect the obligation from the Article 6 of the Annex G of the Agreement on Succession, according to which the domestic legislation of each country successor that refers to

occupancy rights will be equally applied for persons who were citizens of SFRY and who possessed those rights without discrimination upon any basis such as gender, race, colour, language, religion, political or other orientation, national or social origin, national minority affiliation, property status, birth and other status. What remains to be done is the adjustment of the legal framework to the described obligation from the Agreement on Succession, which would be followed by an acceptable practice of the competent bodies of the Republic of Croatia regarding the protection of or compensation for the pre-war apartments. It is true that the Republic of Croatia still did not formally ratify the Agreement on Succession, although the ratification should, at least according to the latest statements of officals, happen soon. Nevertheless, even before the formal ratification, there are other obligations that result from the status of being the member of the Council of Europe, which was partially already described.

III REGIONAL OBSTACLES REGARDING OCCUPANCY RIGHTS

According to the past experience, the process of apartment repossession by their occupancy right holders is very slow in both entities, and it is not necessary to seek for the reasons for that in the legislation but the reasons are of other nature- unacceptable practice that supports the obstruction. Another thing that needs to be emphasized is the fact that the property legislation, even though it is not the limiting factor, has not been adjusted.There are parallel institutions with the same competency, which present a good enviroment for legal insecurity, and it makes the repossession procedure more expensive.

Regarding the Republic of Croatia, the situation is completely different. According to the internal legal system of Croatia, returnees to Croatia have forever lost their occupancy rights, their apartments were privatized and they do not have any legal possibilities to change such an unacceptable position. Can the Agreement on Succession bring any change in that direction and is the Republic of Croatia obliged to upon that agreement guarantee certain rights to that category of people?

Pursuant to the Article 6 of the Agreement, the «domestic legislation of each country successor (SFRY) with regard to right to residence – occuapancy right will be equally applied to all persons that were citizens of former SFRY and that had such rights without discrimination upon any basis such as the gender, race, language, religion, political or other orientation, national minority affiliation, national or social origin, property status or any other status.» When taking into account the statistical data and when analyzing the national affiliation of persons who lost their occupancy rights in Croatia, it is impossible not to notice that one national minority forever lost occupancy rights that it had before the war, and in that context one should question whether the legislation of Croatia was equally applied to all citizens and whether it was discriminatory for a certain category of people.

As already said, Croatia did still not ratify the Agreement, however, except of the membership in the Council of Europe, it presumes to enter the European Union (according to the current situation, that will most probably happen until 2007), and that could be a key factor for a final and definite resolution of issues concerning apartment repossessions or adequate compensations to all pre-war occupants in this country in an acceptable way.

C. PENSIONS

I BOSNIA AND HERZEGOVINA

Type of rights

The basic rights from the retirement-disability insurance in Bosnia and Herzegovina are the following: old-age pension, disablement pension and widow's pension.

When the insured becomes 65 years old and reaches at least 20 years of service for insurance he/she acquires the right to the old-age pension. The insured who reaches 40 years of service for insurance acquires the right to old-age pension no matter of his/her age. The retirement-benefit base for determining of the old-age pension is the average amount of the insured's net salary (net average yearly earning of the insurance) starting from 1 January 1970 (however, in the RS one does not take into account the wages nor the average yearly earning of the insurance for 1992 and 1993). There is a privilege for female insurants (but not obligation) consisting of the fact that they may request their retirement even when 60 years old and with at least 20 years of service or when they reach 35 years of service for the insurance regardless of their age. The old-age pension for 20 retirement years of service goes to the insurant to the amount of 45% of the retirement-benefit base and it is being increased by a certain percentage for each following full year of the retirement years of service, depending in which year the person gets retired (as a rule the percentage is less if the retirement happens later, because it amounts to 1,70% for retirement in 2002, in 2003 it amounts to 1,60% and in 2004 and the following years it amounts to 1,50%).

The following insurants have right to the disablement pension: 1) when there is a loss of physical performance; 2) when a person has more capacity for work but is not being provided with additional training regarding the qualification or retraining due to the fact that he/she is more than 55 years old as of the date when the disablement occured. The disablement pension for the retirement years of service up to 20 years goes to the insurant to the amount of 50% of the retirement-benefit base and it is being increased by a certain percentage for each following full year of the retirement years of service, depending in which year the person gets retired.

Retirement-benefit base for the determining of the disablement pension is the same as in the determining of the old-age pension

There are certain persons who realize the widow's pension in cases of death of the insurant or the beneficiary of old-age or widow's pension. Those are the following persons: 1) widower or widow; 2) a divorced spouse, if determined by the decision of the court that he/she has right to support; 3) a child (marital, extramarital, adopted, step-child); 4) father, mother, step-father, step-mother, adoptive parent. A deceased person includes also a missing person who was proclaimed deceased in the legally defined procedure.

The widow's pension is being determined in the following cases: after the death of the insurant - in the percentage of the disablement pension that would belong to the insurant in case he/she lost the capacity for work; after the death of the insurant of personal pension - in the percentage of the pension that belonged to the deceased on the day of death. Depending on the number of household members who are entitled to widow's pension, it can amount from 70% to 100% of the retirement-benefit base as explained in the previous paragraph. There is a legal possibility to voluntarily pay the insurance. However, it is not possible to retroactively pay in the contribution for a certain period in the past, but only upon filing the request for acceptance in the insurance.

Insurants who fullfill the age criteria for the old-age pension, but do not have enough years of service, can gather some more. One can buy as many years of service as is missing to meet the legal conditions (hence, until the settlement of 20 years of service), but not more than 3 years. The constribution has to be paid in to the full amount for the period that is being additionally gathered.

The total amount of each pension in the RS in 2004 should not be higher than 75% of the retirement-benefit base, because the pensions with higher base need to be reduced to this percentage until then.

The lowest pension in the RS currently amounts to 80 KM, whereupon pensions are not being paid out in the amount determined by the decision, but in reduced amounts, depending on the available resources in the fund (according to a special decision of the High Representative for BiH dated 12 November 2000.).

Agreement between BiH pension funds PIO (MIO)

There are three funds of the retirement-disability insurances in BiH: Social Fund for retirement-disability insurance BiH Sarajevo, RS Public Fund for retirement-disability insurance in Banja Luka and the Institute for retirement and disability insurance in Mostar (hereinafter: the funds). These funds concluded the Agreement on mutual rights and obligations in the implementation of the retirement and disability insurance in BiH (hereinafter: the Agreement), which entered into force on 25 May 2000.

The main rule is that the fund which was paying out pensions upon the entry into force of the Agreement (25 May 2000) continues to pay out pensions regardless of the insurant's permanent residence or habitation. If the pension was paid out to the beneficiary from April 1992, but was stopped before the Agreement entered into force, the fund that was the latest one to pay out the pension will continue with the procedure.

If the Social Fund for PIO BiH was paying out the pension as of March 1992, and the payment of the pension for the period from April 1992 until the Agreement entered into force was not done by any fund, the payment of the pension will be carried out by the fund on which territory the pay-out address of the beneficiary was located for March 1992 in BiH, regardless of the current residence or habitation of the beneficiary. If the pay-out address of the beneficiary in these cases was located outside BiH, but on the territory of former SFRY, the payment of the pension will be carried out by the fund on which territory the pension beneficiary, before realizing the right to pension, was the last time insured in BiH, regardless of the current residence or habitation of the pension beneficiary.

If the payment of the pension as of March 1992 was carried out by the fund outside former SFRY, and thereafter no other fund in BiH took over the obligation to pay out the pension, the Social Fund PIO BiH will continue to pay out the pension to those beneficiaries (whereupon the remaining two funds have the obligation to compensate one third of the gross pension and payment fees each).

If the right to pension was recognized by one of the three funds in BiH after 1 April 1992, but the payment was not carried out until the Agreement entered into force, the payment of the pension will be carried out by the fund with which the beneficiary was the last time insured. With regard to this, the Public Fund PIO RS obliged itself to recognize the right to pension according to the regulations that it applies.

All the retirement years of service reached in the republics of former SFRY, including the former Institute for retirement-disability insurance of military insurants Belgrade will be taken into account by the funds in BiH for the fulfillment of conditions for recognizing of rights, as well as for the determining of the pension amount, in line with the regulations that are being applied. If a fund in BiH recognized some special years of service that will also be taken into account.

The retirement years of service reached until 30 April 1992 with the former Fund, as well as the insurance years of service reached after 30 April 1992 with one of the funds in BiH will be taken into account by that fund for the determining of conditions for the recognizing of rights and pension amount.

The Agreement regulates situations in which the retirement years of service were realized with more than one fund in BiH after 30 April 1992, when a proportional pension is determined. In this case the seniority up to 15 days does not count, and the one including more than 15 days is being counted as one month.

If the claimant who is requesting to realize his/her right to pension has not reached the retirement years of service in BiH, but does have the retirement years of service in the former republics if SFRY, the pension falls on the burden of the fund on which territory the claimant has his/her residence, and if the claimant is a displaced person - on which territory the claimant has his/her residence as of the date when he/she fulfilled the conditions for the old-age or widow's pension, i.e. upon the request for disablement pension.

The funds decide upon the requests on the basis of the law and other regulations that are being applied. There is an obligation to respect additional clauses from the Agreement.

The Agreement contains precise criteria for the competencies of the funds when deciding upon requests filed by the interested persons similar to the ones described for the pension payments. The important provision according to which the fund is obliged to receive a request even when it is not competent for decision-making, according to the provisions of the Agreement, and to forward it to another competent fund.

II THE REPUBLIC OF CROATIA

The Republic of Croatia carried out a complete reform of the pension system, hence it set the whole pension system on completely different bases. However, the problem of pension payments remained, as well as the recognizing of retirement years of service to citizens who left Croatia but acquired the right to pension in Croatia or they either acquired the right to a proportional part of the pension in Croatia. In that light, problems that this country faces are identical to the ones that Bosnia and Herzegovina faces; particularly when having in mind that both pension systems derive from the pension system if former SFRY.

III REGIONAL OBSTACLES REGARDING THE PENSIONS

In both countries the payment of pensions was widely suspended to refugees, and there are also problems regarding the recognition of the right to pension that was acquired after the disintegration of SFRY. According to the Agreement, the one who is obliged to pay out pensions is the signatory country, i.e. former republic of SFRY that even before the war financed the payment of the legally acquired pension to a certain person.

In other words, the nowadays independent country in which the citizen was retired during the existence of SFRY is obliged to finance the payment of pensions to the beneficiaries. Signatories of the Agreement obliged themselves to regularly pay out pensions in accordance with the aforementioned criteria regardless of the nationality, citizenship, place of habitation and permanent residence of the pension beneficiary.

Regarding the pension beneficiaries that were civil or military servants of former SFRY, the basic rule is that the signatory country, whose citizens they are, is obliged to pay out the pensions. It is not important for this category of pension beneficiaries whether they are at the same time domiciles in the country in which they are citizens, provided that their pensions are financed from the former federal budget or other federal sources of former SFRY. If the aforementioned pension beneficiaries are citizens of more newly established countries, then the country in which the pension beneficiary is a domicile will be obliged to pay out pensions. If the pension beneficiary is not a domicile in any of the countries in which he/she is a citizen, then the country on whose territory that pension beneficiary had the place of residence as of 1 June 1991 is obliged to pay out the pension.

Pursuant to the provisions of the Agreement (Art. 3 of the Annex E) the countries will, if necessary, conclude bilateral agreements in order to provide for the pension payments to civil and military servants of former SFRY that are in the country other than the one paying the pensions to those people. Such an agreement can include issues of transferring the necesary funds to provide for the payment of those pensions, i.e. to pay out pensions proportionally the the payment of contributions. It is also possible to conclude interim agreements in relation to these issues. The bilateral agreement can also resolve the issue of appeals between the pension funds of the countries in relation to the payment of pensions that were carried out in a previous period, before the Agreement entered into force. The Republic of Croatia and Bosnia and Herzegovina signed such a bilateral agreement, and it is still due to see how this agreement will be implemented in practice.

Conclusion

It will be necessary to change or issue new internal laws, particularly in some of the successor countries, in order to correctly implement the Agreement. A new legislation will be especially inevitable in order to apply the Agreement in fields referring to the protection and repossession of private property, apartments and pension payments to former beneficiaries. In any case, it will be necessary to change the unacceptable practices in many situations even where regulations are acceptable from the normative point of view. The real application of the Agreement, i.e. the effective realization of rights to many persons damaged by the past war will depend a lot on this circumstance.

*In the development of this analysis with reference to the part involving property and apartment repossessions in the Republic of Croatia written material of the Humanitarian Centre for integration and tolerance Novi Sad was used (unpublished, although officially presented at the conference of OSCE Belgrade held from 11 to 13 March 2003.)

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BOSNIA-HERZEGOVINIAN LEGAL GROUP CONSISTS OF THE FOLLOWING NON-GOVERNMENTAL ORGANIZATIONS: INTERNATIONAL LEX BANJA LUKA, JOB 22 SARAJEVO, WOMEN BIH MOSTAR, BOSPO TUZLA AND THE BUREAU FOR HUMAN RIGHTS BIJELJINA.

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